

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
722 JACKSON PLACE, N. W.
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November 19, 1976

MEMORANDUM FOR HEADS OF FEDERAL AGENCIES

SUBJECT: Environmental Review Pursuant to Section 1424(e) of the Safe Drinking Water Act of 1974 and its Relationship to the National Environmental Policy Act of 1969

This memorandum provides guidance to Federal agencies on how to carry out an evaluation of the impact of federally assisted projects on groundwater supplies.

Section 1424(e) of the Safe Drinking Water Act of 1974 [P.L. 93-523] authorizes the Administrator of the Environmental Protection Agency (EPA) to designate an aquifer for special protection if it is the sole or principal drinking water resource for an area, and if its contamination would create a significant hazard to public health. The Administrator may make this designation on the basis of a citizen petition or upon EPA's own initiative. No commitment for Federal financial assistance, through a grant, contract, loan guarantee or otherwise, may be entered into for any project that the Administrator determines may contaminate such a designated aquifer through a recharge zone so as to create a significant hazard to public health. This memorandum provides information and guidance to Federal agencies regarding the relationship of the review of such projects by the Administrator of EPA to the environmental review process established by the National Environmental Policy Act (NEPA).

If an area is under consideration for designation, EPA will publish notice in the Federal Register and notify the regional offices of Federal agencies. If an area is designated, the Federal agencies will receive notice with a map of the designated area with the recharge zone outlined. In each case relevant A-95 agencies will also be notified.

In general, EPA's reviews and determinations for Federally supported projects in the recharge zone of an aquifer designated under Section 1424(e) will involve actions subject to the provisions of NEPA and to a large degree will focus

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on proposed actions for which environmental impact statements (EISs) are prepared. EPA's review will be incorporated within its responsibilities and determinations under NEPA and other environmentally protective laws, including Section 309 of the Clean Air Act. For such actions planned to occur in designated aquifer areas, Federal agencies should send a copy of their decisions to prepare draft EISs* to the appropriate Regional EPA Administrator. This procedure will allow early consultation on projects and help avoid delays. Close coordination should take place between regional Federal agency offices and regional EPA offices during the environmental review process under NEPA, to minimize any adverse impact on aquifers designated or under consideration for designation pursuant to Section 1424(e).

EPA may conduct a special review of Federal aid projects that are in the vicinity of recharge zones of aquifers designated under Section 1424(e) on its own initiative or on the basis of citizen petition. If it decides to conduct a special review, EPA will notify the appropriate Federal agency. To date, only the Edwards Underground Reservoir, San Antonio, Texas, has been designated under Section 1424(e). Project review guidelines for Edwards were published by EPA in the Federal Register on December 16, 1975.

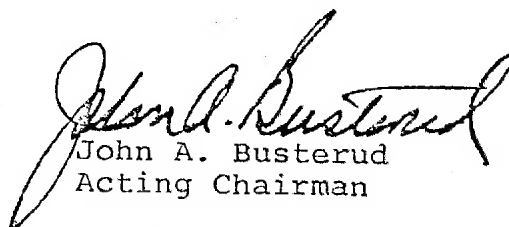
This memorandum should be understood to apply only to aquifers designated under Section 1424(e) of the Safe Drinking Water Act. Nevertheless, as part of their overall NEPA responsibilities, Federal agencies should continue to identify and analyze any significant groundwater impacts of their actions in cases where a particular aquifer has not been designated by EPA. In doing so, agencies may wish to consult with EPA early in project planning by contacting the appropriate regional office.

If, on the basis of an environmental assessment, it appears that there will be significant impacts on groundwater quality, a full EIS is warranted.

*Such notification should be provided pursuant to CEO Guidelines Section 1500.6(e).

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By incorporating evaluation of groundwater impacts into planning of Federally assisted projects pursuant to NEPA, Federal agencies will avoid potential delays which might have been caused by Safe Drinking Water Act requirements. Agencies should review their NEPA procedures to assure that sufficient attention is given to evaluating potentially significant groundwater impacts of programs and projects. CEQ will be glad to assist in this effort.


John A. Busterud
Acting Chairman

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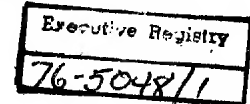
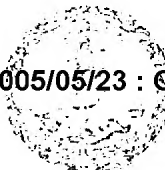
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COMMONWEALTH of VIRGINIA

Council on the Environment

GERALD P. MCCARTHY
CHAIRMAN AND
ADMINISTRATOR

903 NINTH STREET OFFICE BUILDING
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October 1, 1976

M E M O R A N D U M

TO: All Recipients of the June, 1976, Revision of the
Procedures Manual and Guidelines for the Environmental
Impact Statement Program in the Commonwealth of Virginia

FROM: Gerald P. McCarthy

I am pleased to announce that Mr. Reginald F. Wallace has accepted the assignment of "Environmental Impact Statement Coordinator" on the Council Staff, effective today. Mrs. Susan T. Wilburn, who has had this responsibility for the past three years, has been promoted to Assistant Administrator for the Council. Please note this change in Appendix C of your Procedures Manual (page 47) and direct all questions or correspondence regarding the Environmental Impact Statement program to Mr. Wallace in the future.

Also, please note the changes in the list of State Agencies Participating in Review of Environmental Impact Statements (Appendix C, pages 46 and 47). An updated copy of the list is enclosed.

As a point of clarification, the Supplemental Guidelines of the Virginia Institute of Marine Science mentioned on page 24 and included on page 31 of the Procedures Manual address topics pertinent to that organization's evaluation of the effects of activities taking place in the marine environment. This evaluation is advisory to the Virginia Marine Resources Commission, which has the regulatory authority to protect the marine environment, as well as to all other interested individuals or organizations. In this regard, the guidelines on page 31 address topics necessary to the decision-making responsibility of the Virginia Marine Resources Commission.

Thank you very much for your attention to both these changes and the note of clarification regarding the regulatory responsibility of the Virginia Marine Resources Commission.

GPM:STW:dls

Enclosure

Gerald P. McCarthy / stw

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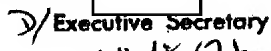
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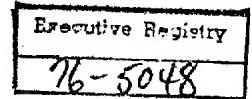
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COMMONWEALTH of VIRGINIA

Council on the Environment

ALD P. MCCARTHY
CHAIRMAN AND
ADMINISTRATOR

903 NINTH STREET OFFICE BUILDING
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August 11, 1976

Dear Ladies and Gentlemen:

Enclosed is a copy of the recently revised Procedures Manual and Guidelines for The Environmental Impact Statement Program In The Commonwealth of Virginia. This manual addresses the Council on the Environment's authority and procedures for implementing the Environmental Impact Statement requirements in the Commonwealth of Virginia for both State and federally-sponsored projects. It is sent to you with an invitation for suggestions for continuing procedural improvements.

We encourage use of this manual by all affected by or interested in the program. If you have any questions or would like to submit suggestions, please contact the Environmental Impact Coordinator at the Council office at (804) 786-2189.

Thank you for your continued interest in the Council's activities.

Sincerely,

Gerald P. McCarthy

GPM:dja
Enclosure

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PROCEDURES MANUAL AND GUIDELINES
FOR THE
ENVIRONMENTAL IMPACT STATEMENT PROGRAM
IN THE
COMMONWEALTH OF VIRGINIA

PREPARED BY THE
COUNCIL ON THE ENVIRONMENT
COMMONWEALTH OF VIRGINIA
JUNE, 1976

PURPOSE OF MANUAL

The purpose of this manual is to describe the Environmental Impact Statement process in the Commonwealth of Virginia for both State and major Federally-funded or Federally-licensed projects. Since the intent is the same for both types, only differences in how they are processed are addressed. In each subsequent section dealing with the responsibilities of the Council, the agencies preparing EIS's, and the reviewing agencies, these differences have been specifically noted. If no distinction is made, the procedures can be assumed to be the same for both.

The Council has placed a major emphasis on fiscally conservative practices. To hold down the manpower costs, paper flow, and other expenditures associated with the EIS program, several procedural changes have been effected since the initiation of the program. The Council hopes these procedures will facilitate a unity of purpose and direction among all participating agencies and individuals that results in a review process that is efficient, timely, comprehensive and consistent.

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Executive Secretary

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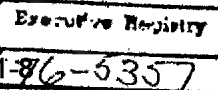
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EXECUTIVE SECRETARY FOR

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EXECUTIVE OFFICE OF THE PRESIDENT
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September 24, 1976

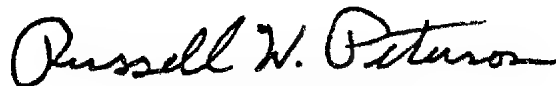
MEMORANDUM TO HEADS OF AGENCIES ON APPLYING THE EIS REQUIREMENT
TO ENVIRONMENTAL IMPACTS ABROAD

In recent months the Council has been involved in discussions with several agencies concerning the application of the EIS requirement in NEPA to U.S. actions with significant environmental impacts abroad (the high seas, the atmosphere, and other areas outside the jurisdiction of any nation; and other countries). We have noted different interpretations and practices among several agencies on this issue, and consequently have seen impact statements filed which reflect varying degrees of consideration of the impacts abroad of U.S. actions (whether the actions are taken or the decisions made in the United States or abroad).

In order to encourage a consistent application of NEPA to all major federal actions, the Council is issuing the attached Memorandum on the Application of the EIS Requirement to Environmental Impacts Abroad. In it, we advise that NEPA requires analysis and disclosure in environmental statements of significant impacts of federal actions on the human environment -- in the United States, in other countries, and in areas outside the jurisdiction of any country.

We believe that by taking account of likely impacts abroad before deciding on a proposal for action, federal agencies can obtain the same benefits of NEPA review that accompany the development of projects or actions with domestic impacts. Moreover, we believe such analyses can be accomplished without imposing U.S. environmental standards on other countries, and without interfering with the execution of foreign policy. To the contrary, such analysis and disclosure can provide useful information to cooperating governments. Finally, if agencies undertake these analyses in cooperation with involved foreign governments, U.S. agencies can promote international approaches to environmental protection as recommended in the Stockholm Declaration and elsewhere.

We recommend that agencies which take actions abroad and/or which take actions in the United States with potential significant environmental impacts abroad consult as necessary with the Council or the Council's staff concerning specific procedures, proposals or programs which may be affected.

A handwritten signature in cursive script, reading "Russell W. Peterson".

Russell W. Peterson
Chairman

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
722 JACKSON PLACE, N. W.
WASHINGTON, D. C. 20006

September 24, 1976

Memorandum on the Application of the
EIS Requirement to Environmental Impacts
Abroad of Major Federal Actions

NEPA requires analysis of significant environmental impacts of proposed major federal actions on the quality of the human environment. The "human environment" is not limited to the United States, but includes other countries and areas outside the jurisdiction of any country (e.g., the high seas, the atmosphere). The Act contains no express or implied geographic limitation of environmental impacts to the United States or to any other area. Indeed, such a limitation would be inconsistent with the plain language of NEPA, its legislative purpose, the Council's Guidelines, and judicial precedents.

In a statute which in other sections refer specifically to the national environment,¹ use of the term human environment in §102(2)(C) reflects an intent to cover environmental impacts beyond U.S. borders. This interpretation is consistent with NEPA's stated purpose, declared in the preamble to the Act, to "encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment

1 See, e.g., Sections 101(b), (2), 101(b)(4), 201.

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and biosphere and stimulate the health and welfare of man." It is also consistent with Congress' recognition in Section 101 of "the profound impact of man's activity on the inter-relations of all components of the natural environment ... and ... the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man." Applying the EIS requirement to impacts abroad also implements the mandate in Section 102 to all agencies to "recognize the worldwide and long range character of environmental problems." In sum, the broad language of Section 102(2)(C) as well as the explicit congressional determination that our national environmental policy must have a global perspective gives Section 102(2)(C) a wide scope.

The legislative history of NEPA supports the inclusion of impacts globally and in other countries within the scope of the EIS requirement. A 1968 "Congressional White Paper on a National Policy for the Environment", summarizing the joint House-Senate colloquium on national environmental policy that led to NEPA's introduction, and inserted into the record by Senator Jackson during debate, stated, "[a]lthough the influence of the U.S. policy will be limited outside its own borders, the global character of ecological relationships must be the guide for domestic activities."² Both the House and the Senate reports on NEPA, reflecting the testimony

of numerous witnesses at the hearings, recognized the statute's global perspective.³ Statements to the same effect were made during the floor debates, including an explanation by Senator Jackson of NEPA's statement of environmental policy:

"What is involved [in NEPA] is a congressional declaration that we do not intend, as a government or as a people, to initiate actions which endanger the continued existence or the health of mankind: That we will not intentionally initiate action which will do irreparable damage to the air, land and water which support life on earth."⁴

The House Merchant Marine and Fisheries Committee during oversight hearings specifically rejected the argument that NEPA should not be applied to actions occurring within the jurisdiction of another nation:

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- 3 See, e.g., Sen. Rep. No. 91-296, 91st Cong., 1st Sess., at 17, 43-45 (1969); H.R. Rep. No. 91-378, 91st Cong., 1st Sess., at 5, 7 (1969).
- 4 115 Cong. Rec. 19009 (July 10, 1969); see also 115 Cong. Rec. 14347 (May 29, 1969); 115 Cong. Rec. 26575-16476 (Sept. 23, 1969); 115 Cong. Rec. 29056 (Oct. 8, 1969).

"Stated most charitably, the committee disagrees with this interpretation of NEPA. The history of the act makes it quite clear that the global effects of environmental decisions are inevitably a part of the decisionmaking process and must be considered in that context."⁵

The Council has consistently applied NEPA to U.S. international activities and has urged federal agencies to recognize the Act's global perspective. In its first Annual Report, for example, the Council pointed out that NEPA "directed all agencies of the Federal Government to recognize the worldwide and long-range character of environmental problems."⁶ In 1971 the Council's Legal Advisory Committee specifically urged federal agencies to apply NEPA to their actions in foreign countries.⁷ The Council's 1973 Guidelines require the assessment of "both the national and international environment."⁸ The Fifth Annual Report reviewed agencies' experience in applying the EIS process to U.S. actions abroad.⁹ In 1976 the Council reported on one of the benefits of this experience--the growth of environmental impact assessment procedures in other countries.¹⁰

5 H.R. Rep. 92-316, 92nd Cong., 1st Sess., at 32-33 (1971).

6 CEQ, Environmental Quality - 1970, at 200 (1970).

7 Legal Advisory Committee Report to the President's Council on Environmental Quality, at 13-17 (December 1971).

8 40 C.F.R. Section 1500,8(a)(3)(i) (1975).

9 CEQ, Environmental Quality - 1974, at 399-400 (1974).

10 CEQ, Environmental Quality - 1975, at 653-54 (1976).

Accordingly, some federal agencies have provided in their NEPA procedures for the preparation of environmental statements when agency actions cause significant environmental impacts beyond U.S. borders,¹¹ and impact statements have been prepared on U.S. actions in foreign countries.¹² Moreover, the courts¹³ and virtually every legal commentary

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- 11 See, e.g., 38 Fed. Reg. 34135-46 (1973) (Coast Guard); 37 Fed. Reg. 19167-68 (1972) (Dept. of State); 41 Fed. Reg. 26913-26919 (1976) (Agency for International Development).
- 12 See, e.g., Dept. of Transportation, Draft EIS, Darien Gap Highway (March 1976); Dept. of the Interior, Final EIS, Alaska Natural Gas Transportation System (March 1975).
- 13 In Wilderness Society v. Morton, 463 G. 2d 1261 (D.C. Cir. 1972), the court granted standing to Canadian intervenors concerned with the trans-Alaska Pipeline, holding that the intervenors' interest in the significant impacts of the pipeline in Canada were within the zone protected by Section 102(2)(c). In Sierra Club v. Coleman, 405 F. Supp. 53 (D.D.C. 1975), the court held, inter alia, that DOT's impact assessment on portions of the Pan-American Highway was deficient because it failed to address the environmental impacts of alternative highway corridors through Panama and Columbia. Since the significant impacts of corridor alternatives lay exclusively in Panama and Columbia, the case necessarily holds that impacts in foreign national territory are within the scope of Section 102(2)(C).
Of course, significant indirect as well as direct impacts must be considered. 40 C.F.R. Section 1500.8(a)(3)(ii) (1975); City of Davis v. Coleman, 521 F.2d 661, (9th Cir., 1975); see CEQ, Environmental Quality-1974, at 410-11 (1974).

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addressing the subject¹⁴ have supported the Council's belief that an environmental statement is required whenever U.S. actions would have significant environmental impacts on the U.S., on global resources, or on foreign countries.

14 See, e.g., Committee on Environmental Law of the Section on International and Comparative Law of the American Bar Association, Opinion on the International Scope of NEPA (July 1971); Strausberg, the National Environmental Policy Act and the Agency for International Development, 7 Int'l. Law. 46 (1972); Robinson, Extraterritorial Environmental Protection Obligations of Foreign Affairs Agencies: The Unfulfilled Mandate of NEPA, 7 Int'l. Law. Pol. 257 (1974) Note, the Extraterritorial Scope of NEPA's Environmental Impact Statement Requirement, 74 Mich. L. Rev. 349 (1975); Appelbaum, Controlling the Hazards of International Development, 5 Ecol. L.Q. 321 (1976).

The policies underlying NEPA reinforce the interpretation suggested by its language and legislative history, judicial precedents and administrative practice. Analysis and disclosure in an EIS of significant environmental effects provide U.S. decisionmakers a fuller picture of the foreseeable environmental consequences of their decisions. Impact statements do not dictate actions on foreign soil or impose U.S. requirements on foreign countries; instead, they guide U.S. decisionmakers in determining U.S. policies and actions.

In addition, EISs provide information to cooperating governments which they then could use in making decisions about projects within, or which may affect, their countries. Far from being an imposition, this information can enhance the value of U.S. assistance or participation. This full disclosure by the United States contributes to the integrity of cooperating governments' policy making, and thus lends support to international environmental cooperation as directed in §102(2)(F),¹⁵ the Stockholm Declaration, and other international agreements.¹⁶

¹⁵ See H.R. Rep. 92-316, 92nd Cong., 1st Sess., at 33 (1971).

¹⁶ See, e.g., Convention Concerning the Protection of the World Cultural and Natural Heritage, November 23, 1972; Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, October 12, 1940.

To the extent national security or essential foreign policy considerations make controlled circulation of environmental statements necessary, NEPA provides sufficient procedural flexibility to accomplish this. Section 102(2)(C) provides exceptions to public circulation of documents by incorporating the Freedom of Information Act and its exemptions by reference. Environmental statements or portions of them have been classified, for example, when necessary to protect national security.¹⁷ Presumably, if public examination of a proposed U.S. action in another country would jeopardize U.S. foreign policy in a given instance, circulation of the environmental statement could be restricted in accordance with these statutory procedures.¹⁸ In general, however, Congress has mandated that environmental statements are public documents.

In summary, the Council believes that the impact statement requirement in §102(2)(C) of NEPA applies to all significant effects of proposed federal actions on the quality of the human environment -- in the United States, in other countries, and in areas outside the jurisdiction of any country. Accordingly, agency officials responsible for

17 See, e.g., U.S. Navy, Final EIS, Transit Satellite (June 1972).

18 Thus, NEPA incorporates a procedure for ensuring that the execution of U.S. foreign policy and U.S. environmental policy are consistent. Of course, no agency has the authority otherwise to deviate from NEPA's requirements, on foreign policy or other grounds. Calvert Cliffs' Coordinating Comm. v. AEC, 449 F.2d 1109 (D.C. Cir. 1971).

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analyzing the potential environmental effects of proposed actions should fully assess the potential impacts outside the United States, as well as those within it; if any of these potential impacts are likely to be significant, an impact statement should be prepared.

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